

Exhibit 9

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1 J. McLachlan - Direct - Mr. Nadkarni
2 different asset class received those
3 same revenues in their bonus pool?

4 A. No.

5 Q. Now, Mr. McLachlan, I'd like to
6 talk a little bit more about the bonus
7 pools in general.

8 At the time you worked for BGC in
9 2015, were you generally familiar with
10 the process of calculating bonus pools
11 for the desks that Mr. Aubin supervised?

12 A. Yes, I was.

13 Q. And what was the basis for your
14 familiarity?

15 A. I prepared the calculations. An
16 initial draft was sent to me but it was
17 my responsibility to produce those
18 calculations.

19 Q. And more specifically, were you
20 familiar with the process of calculating
21 the bonus pool for the desks that Mr.
22 Andriesz supervised?

23 A. Yes, I was.

24 Q. And can you remind the panel
25 which desks those were?

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1 J. McLachlan - Direct - Mr. Nadkarni

2 A. That was the London futures desk
3 and the New York futures desk.4 Q. At the time Mr. Andriesz took
5 over the New York futures desk, do you
6 recall what the performance of that desk
7 was like compared to London?8 A. Less good. Yes, it was less
9 good. It was, as a whole, it was not,
10 it was not generating bonus. There were
11 individuals who, because of their deals,
12 were getting paid but overall it was not
13 as good as London.14 Q. So when Mr. Andriesz signed the
15 agreement, were you aware of whether
16 there was any understanding as to
17 whether the pool of the New York desk
18 could negative -- would be intended to
19 impact the pool of the London desk
20 beginning immediately?

21 A. Yes.

22 Q. And what was your understanding?

23 A. That it was, that there would be
24 a netting. So negative, a negative
25 number on New York would be offset

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1 J. McLachlan - Direct - Mr. Nadkarni
2 against a positive number in London, for
3 example.

4 Q. Was the netting intended to begin
5 as soon as Mr. Andriesz began?

6 A. That was not our intention.

7 Q. Can you explain why?

8 A. We said that there would be a
9 period of grace during which Mr.
10 Andriesz could fix the performance of
11 the New York desk.

12 Q. But what -- you said that -- but
13 just to clarify your testimony. You
14 said that after a period of grace there
15 was intended to be a netting?

16 A. Yes, indeed.

17 Q. From BGC's perspective what was
18 the motivation for that.

19 MR. BRICKMAN: Object to the
20 question. This witness has testified
21 that he had left BGC, and so he was
22 not there when Mr. Andriesz signed
23 the US contract. Unless I'm getting
24 my dates wrong, he signed the US
25 contract, which is Exhibit 38, in

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1 J. McLachlan - Direct - Mr. Nadkarni
2 January of 2016, and the question
3 he's asking this witness is to
4 interpret that contract at a time
5 when he was not even at BGC. Can we
6 set this in time?

7 MR. NADKARNI: Mr. Chair, I think
8 opposing counsel is a bit confused as
9 to the dates here.

10 THE CHAIRMAN: Mr. Nadkarni,
11 you've got to let Mr. Brickman
12 finish.

13 MR. NADKARNI: Sure.

14 THE CHAIRMAN: I assure counsel,
15 as I've done before, I make no
16 rulings without counsel having
17 exhausted their commentary.

18 Mr. Brickman, I apologize for any
19 cut off. You were telling us?

20 MR. BRICKMAN: We just need to
21 set the question in terms of time
22 because if he's asking him questions
23 about something that had happened
24 when he was not at the firm, this,
25 this witness is not competent to

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1 J. McLachlan - Direct - Mr. Nadkarni
2 opine as to the interpretation of a
3 contract that was entered into when
4 he wasn't there.

5 And maybe I'm getting my dates
6 wrong, but I heard the witness
7 testify he left in mid 2015 and was
8 not there in 2015 and 2016.

9 MR. NADKARNI: Mr. Chair, can I
10 lay a foundation?

11 THE CHAIRMAN: That was what I
12 was going to ask you to do.

13 MR. BRICKMAN: That's all I'm
14 asking for.

15 Q. Okay, Mr. McLachlan, I'd like to
16 show you Exhibit 38 which is already in
17 evidence.

18 Can you review this and tell me
19 what it appears to be?

20 A. Okay, so that appears to be an
21 employment contract between BGC
22 Financial, LP and Simon Andriesz.

23 Q. Can you remind the panel of what
24 the date of it is?

25 A. 21st of January, 2015.

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1 J. McLachlan - Direct - Mr. Nadkarni

2 Q. Were you working at BGC then?

3 A. Yes, I was.

4 Q. Were you working for Mr. Aubin?

5 A. Yes, I was.

6 Q. And were you familiar with the
7 company's understanding of how this
8 contract operated at the time?

9 A. Yes.

10 MR. BRICKMAN: Objection. This
11 witness is not competent to talk
12 about the company's understanding of
13 the contract. He can have his
14 understanding. But how can he
15 testify as to the company's
16 understanding of a contract?
17 Objection.

18 MR. NADKARNI: Mr. Chair, this
19 began with Mr. Brickman asserting
20 this contract was dated in 2016. I'm
21 simply trying to establish that Mr.
22 McLachlan was in fact familiar.

23 THE CHAIRMAN: Then the only
24 portion of the objection that's
25 relevant here is that the form of

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1 J. McLachlan - Direct - Mr. Nadkarni
2 that question is to address whether
3 the company had an understanding.
4 And Mr. Brickman correctly points out
5 that there are 2,000, 5,000
6 employees. And so if you could ask
7 what Mr. McLachlan's understanding is
8 or if he has an understanding of what
9 Mr. Aubin understood based on
10 conversations with him, that would be
11 an acceptable question from what I
12 understand.

13 MR. BRICKMAN: Agreed,
14 Mr. Chairman.

15 Q. Mr. McLachlan, did you speak to
16 Mr. Aubin about his understanding of
17 this contract?

18 A. Yes, I did.

19 Q. And did you speak to Mr. Andriesz
20 about Mr. Aubin's understanding of this
21 contract?

22 A. Yes, I did.

23 Q. Okay. So just to go back to the
24 question I was trying to ask about three
25 minutes ago.

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1 J. McLachlan - Direct - Mr. Nadkarni
2 You said that the intention was
3 that after a grace period they would --
4 after the grace period there would be a
5 netting. What was Mr. Aubin's view as,
6 or what was his view as to why there
7 should eventually be a netting?

8 A. Because, because that's, that's
9 the deal we did.

10 Q. Now at the time periods in which
11 you worked for Mr. Aubin, are you aware
12 of the bonus pool for New York ever
13 being netted against the bonus pool for
14 London?

15 A. Can you repeat, please?

16 Q. Sure. During the time period
17 that you worked for Mr. Aubin in 2015
18 and you were involved in calculating Mr.
19 Andriesz' bonus pool, are you aware of
20 the pool's ever being netted at that
21 time?

22 A. No. This was not done.

23 Q. Now, Mr. Aubin -- sorry, Mr.
24 McLachlan, if I can take you to another
25 exhibit, this is Exhibit 65.

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1 J. McLachlan - Direct - Mr. Nadkarni

2 THE CHAIRMAN: I missed it. I
3 didn't write it down.

4 MR. NADKARNI: This is Exhibit
5 65.

6 THE CHAIRMAN: Thank you.

7 Q. And we will -- there's a few
8 parts of this exhibit so I think we'll
9 go one by one I think so it's most
10 instructive to the panel.

11 Can you explain what this email
12 is?

13 A. So this is me sending to Mr.
14 Andriesz and Tommy Attrill the bonus
15 calculations for the London futures desk
16 and the New York futures desk for
17 quarter 1 of 2015.

18 Q. And, Mr. McLachlan, can you
19 explain to the panel the typical process
20 in which the calculations would be
21 finalized? I'd like you to begin with
22 maybe when you would send this email and
23 then take the panel through what the
24 process was until the payments were
25 actually made on bonuses.

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1 J. McLachlan - Direct - Mr. Nadkarni
2 A. Okay. So the last trade captured
3 and last cost incurred captured by these
4 calculations would have been -- would
5 have been -- where are we? The 31st of
6 March, 2015 and we need to make payment
7 by 31st of -- by 30th of June 2015.

8 And so at some point early on in
9 that following quarter, Q2, bonus
10 calculations would have been produced in
11 draft and given to myself. I would have
12 reviewed them and finalized them and
13 then sent them to the desk head, in this
14 case the desk head and the business
15 manager of the desk.

16 They would have reviewed the
17 calculations. Then any questions they
18 had answered. Then they would have
19 provided me what they call the splits,
20 which is how the pool would be split
21 amongst the individuals on the desk.

22 And in time, for those to be
23 loaded into the approval system,
24 approved by BGC management and given to
25 payroll in time to make the payroll.

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1 J. McLachlan - Direct - Mr. Nadkarni
2 Q. Now during this period, would Mr.
3 Andriesz or Mr. Attrill, his manager,
4 have been given the opportunity to raise
5 any questions they had with you?

6 A. Yes, that's a key part of the
7 process.

8 Q. All right. So let's go to the
9 printout that we've given to the panel
10 and to counsel of the first attachment
11 here which is the one titled Simon
12 Andriesz Bonus Calc Q1 2015.

13 This is the file that is labeled
14 65A and then in parentheses futures
15 options.

16 Mr. McLachlan, can you review
17 this and just tell me what these
18 calculations appear to be?

19 A. That is the bonus calculation for
20 the London futures desk for Q1 2015.

21 Q. So the row that says Total
22 Revenue, what is that depicting?

23 A. That is the revenue that had been
24 done during Q1 of 2015 by the brokers on
25 the futures desk in London.

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1 J. McLachlan - Direct - Mr. Nadkarni

2 Q. Are those the net revenues?

3 A. Yes, they are.

4 Q. Do there appear to be any numbers
5 for CME volume rebates or Pit rebates or
6 market maker crosses in these totals?

7 A. No, there aren't.

8 Q. Do you recall Mr. Andriesz or Mr.
9 Attrill ever raising any issues with you
10 about such figures not being included in
11 this pool?

12 A. No.

13 Q. Putting this away just for a
14 second, did it come as any surprise to
15 you that they didn't raise any
16 questions?

17 A. No.

18 Q. Why is that?

19 A. Because it was well established
20 company policy and a well known fact
21 within the company that rebates were not
22 shown as a credit to net revenue in the
23 bonus calculation.24 Q. Okay. So I'd like to ask not
25 just about rebates but about a few of

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1 J. McLachlan - Direct - Mr. Nadkarni
2 the costs.

3 The calculations we looked on
4 that -- we looked at on that exhibit,
5 did they include any execution costs
6 such as, for example, an ABN Amro
7 clearing contract or Fast Fill or TAO?

8 A. No.

9 Q. So if they are not in the pool
10 calculations, who is actually paying for
11 those costs?

12 A. The company pays those costs.

13 Q. So by the company pays those
14 costs, are you saying that it is outside
15 the pool they pay for the costs?

16 A. Yes, indeed, yes.

17 Q. Did the companies use or did the
18 company use any, any revenues to offset
19 the expenses that it was paying outside
20 of the pool?

21 A. Yes, it did. So there were
22 rebate revenues received that were
23 reported outside of the pool, and these
24 were used to partially offset the costs
25 of those execution costs that you

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1 J. McLachlan - Direct - Mr. Nadkarni
2 referred to.

3 Q. So would you say there was a
4 benefit to the brokers from this
5 arrangement?

6 A. Yes, there was.

7 Q. Can you elaborate on why that
8 would be a benefit to the brokers?

9 A. So the cost, all those execution
10 costs were, were partially offset by
11 rebate revenue, rebate income and
12 partially offset, a fraction of that
13 residual cost was passed to the brokers
14 in the form of a one and a half cent per
15 contract charge on futures contracts
16 that were executed.

17 Q. Okay. Mr. McLachlan, so can you
18 explain, just moving to a similar topic,
19 can you explain at the time if you were
20 familiar with where BGC booked revenues
21 from, say, cross trades with market
22 makers or rebates from Pit brokers?

23 A. Where they were booked?

24 Q. Yes.

25 A. They were booked on the Chicago

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1 J. McLachlan - Direct - Mr. Nadkarni
2 futures line.

3 Q. Now if you could tell the panel
4 at this time how many other futures
5 desks were there in BGC?

6 A. I'd say ten to twelve.

7 Q. Can you name some examples let's
8 say outside of New York City, London or
9 Chicago?

10 A. There was a Mint futures desk in
11 London. There was the Paris futures
12 desk. There was a futures desk in Neon,
13 Switzerland, there were Hong Kong
14 futures, Sydney, to name the ones I can
15 remember this instant.

16 Q. Do you recall whether all of
17 those desks contributed to the volume
18 that generated the Pit rebates and
19 revenue from market maker crosses that
20 were booked to Chicago?

21 A. Yes, they did.

22 Q. Did BGC credit any of those other
23 desks with those revenues into their
24 bonus pool?

25 A. No, they did not.

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1 J. McLachlan - Direct - Mr. Nadkarni
2 Q. Okay. So, Mr. McLachlan, I'd
3 like to go to an exhibit that is already
4 in evidence. This is Exhibit 265, and
5 specifically I'd like to take you to a
6 printout of the first, the first page of
7 the attachment, or to the exhibit. This
8 is the one that's called 265A rebate in
9 parentheses.

10 I don't want to actually ask you
11 to testify to anything that is -- to the
12 accuracy of anything that is written
13 directly here but just to refresh your
14 recollection.

15 So, Mr. McLachlan, I'd like to
16 direct you to the bottom footnote, to
17 one of the lines in the bottom footnote
18 here, footnote romanette i.

19 MR. BRICKMAN: Is this 5?

20 MR. NADKARNI: This is 265A,
21 parentheses, rebate, is the file.

22 MR. BRICKMAN: Hold on. Let us
23 just get there. Now this is a
24 document that was prepared after Mr.
25 McLachlan was no longer at the firm;

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1 J. McLachlan - Direct - Mr. Nadkarni

2 Zhao?

3 A. Ying Zhao was at the time the
4 person in the finance department
5 responsible for preparing the first
6 draft of the bonus and processing the
7 outcome of the bonus review process.8 Q. If you can look down to this
9 email, I don't think the attachment
10 necessarily, but if you can review this
11 email beginning from your email to
12 Mr. Zhao and Ms. Turner and then going
13 up to the top, can you -- can you
14 communicate to the panel what you're
15 intending to communicate here to
16 Mr. Zhao?17 A. So the intention was to
18 communicate that the company wishes to
19 pay a \$12,000 bonus to Mr. Andriesz.20 Q. And do you recall whether that
21 was the ultimate bonus amount remitted
22 to Mr. Andriesz for this quarter?

23 A. Yes, it was.

24 Q. Before that amount was paid out,
25 do you ever recall Mr. Andriesz or

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1 J. McLachlan - Direct - Mr. Nadkarni
2 Mr. Attrill raising any issues with you
3 in which they asserted that there were
4 large sums of revenue missing from the
5 bonus pool?

6 A. No, they did not.

7 Q. All right. Let's go to a similar
8 email but with respect to the other
9 pool.

10 This is Exhibit 75.

11 So, Mr. McLachlan, this is an
12 email you received from Mr. Attrill.
13 Can you just review this and let me
14 first ask, do you recall receiving this
15 email from Mr. Attrill?

16 A. Yes, I do.

17 Q. And can you explain what this
18 email is communicating?

19 A. This is communicating the split
20 of the pool, i.e., who should get paid
21 what, for Q1 of 2015.

22 Q. Which pool is this?

23 A. This is the London pool.

24 Q. So let me ask you, where it says
25 "Simon" here, is that a reference to Mr.

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1 J. McLachlan - Direct - Mr. Nadkarni

2 Andriesz?

3 A. Yes, it is.

4 Q. And do you recall whether this
5 document reflects, accurately reflects
6 the bonuses that were ultimately
7 remitted by BGC?

8 A. Yes, it does.

9 Q. So would this have been a bonus
10 in addition to Mr. Andriesz' previous
11 bonus you referenced?

12 A. Yes.

13 Q. Does there appear in this
14 document to be any netting of these
15 amounts based on the performance of a
16 different desk?

17 A. No, there's not.

18 Q. Now by pool gross bonus, can you
19 explain what that number is, where
20 Mr. Attrill writes "pool gross bonus
21 [REDACTED]."

22 A. That was the amount of pay
23 available to distribute amongst the
24 members of the desk.

25 THE CHAIRMAN: Is that the London

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1 J. McLachlan - Direct - Mr. Nadkarni
2 desk or New York desk or both?

3 THE WITNESS: That is the London
4 desk only.

5 THE CHAIRMAN: Thank you.

6 Q. And, Mr. McLachlan, to clarify,
7 before these amounts were paid out, do
8 you ever recall Mr. Attrill or Mr.
9 Andriesz asserting that there were large
10 quantities of revenue missing from the
11 London pool?

12 A. No, I did not.

13 Q. Do you ever recall them telling
14 you that they believed this amount was
15 low because the deficit of a different
16 pool had been deducted from it?

17 A. No.

18 Q. Now specifically I'd like to
19 direct your attention to the sentence
20 that says, or the section that says
21 "Ronin provision payment, [REDACTED]."

22 What is that a reference to?

23 A. This refers to the paying of a
24 bonus on revenues that were held back,
25 the issue we discussed earlier, the

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1 J. McLachlan - Direct - Mr. Nadkarni
2 payment for market maker revenue that
3 was later released and this is the
4 company now paying on that late
5 collected revenue.

6 Q. Where it says "Simon," who is
7 that a reference to?

8 A. Mr. Andriesz.

9 Q. And do you recall where it says
10 "10,000" next to him, do you recall
11 whether he was paid on that amount for
12 these collections from Ronin?

13 A. Yes, he was.

14 Q. Okay, Mr. McLachlan, we can move
15 on to another document.

16 And I believe we're nearing the
17 end now so this will hopefully just be a
18 few minutes and can take a break.

19 I'd like to show you a document
20 already in evidence. This is Exhibit
21 200.

22 So, Mr. McLachlan, I just want to
23 direct your attention because I know
24 you're not on this email to a part of
25 this email that Mr. Chiles sends to Mr.

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1 J. McLachlan - By The Panel
2 Marine coming into kind of really
3 grab the desk and turn it into a
4 raging success, which he did. And
5 part of his positive attitude towards
6 starting this, I want to say quite
7 recklessly, he agreed to take that
8 cost on. He said, I'm going to build
9 your revenue and I'm going to take
10 this problem away from you by taking
11 this cost.

12 ARBITRATOR ELKIND: And with
13 respect to the payment to [REDACTED]
14 [REDACTED] is that -- was that a proper
15 place to lodge that, that cost?

16 THE WITNESS: No, it was not.

17 ARBITRATOR ELKIND: And why is
18 that?

19 THE WITNESS: We didn't make
20 it -- the proper place to have lodged
21 it would have been to wait until the
22 year-end back office bonus cycle and
23 insert it as an incremental amount on
24 top of her normal comp and then make,
25 have the conversation and get it

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1 J. McLachlan - By The Panel
2 signed off there.

3 On the basis we had talked to
4 [REDACTED] about getting it earlier but
5 hadn't thought clearly enough about
6 the mechanism as to how we were going
7 to deliver it with the promised
8 timing, we set about trying to
9 fulfill our promise which was done in
10 a, not a great way.

11 And I'll carry that one because I
12 found the solution in adverted
13 commerce, but no, it wasn't the best
14 way to do it.

15 ARBITRATOR ELKIND: I have no
16 further questions.

17 Mr. Chair.

18 THE CHAIRMAN: I just have a
19 couple. Again, I want to thank you
20 for your patience. I know it is
21 getting late in your neck or side of
22 the pool or whatever.

23 I want to first, just a couple of
24 questions, but focus on to the extent
25 you had conversations with Mr.

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1 J. McLachlan - By The Panel
2 Andriesz at the time you first heard
3 about the possibility of him working
4 in New York.

5 In any of those conversations,
6 did the subject of who had initiated
7 that concept? Was it divine
8 intervention or some other way that
9 the concept came up, as you recall?

10 THE WITNESS: I recall it
11 being -- I recall it being initiated
12 by Simon.

13 THE CHAIRMAN: Can you elaborate
14 on your recollection beyond that?

15 THE WITNESS: Yes, my
16 recollection was that the opportunity
17 was there after the departure of
18 Mr. Riffice and Simon was keen to
19 take on the New York responsibility
20 as a way of getting to New York, kind
21 of the center of his, his, center of
22 his kind of life was moving from the
23 UK to the US and it fitted very well
24 with that, that move.

25 THE CHAIRMAN: Thank you for

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1 J. McLachlan - By The Panel

2 that.

3 Let me, again in that same time
4 frame, you referenced that there was
5 a plan to have a grace period where
6 the London and New York pools were
7 not, would not be netted or pooled.

8 Can you tell me with whom you had
9 those conversations and whether there
10 was discussion about whether that
11 would be for six months or two years
12 or five years?

13 THE WITNESS: I had a
14 conversation -- I recall having a
15 conversation with Simon around the
16 time he got his contract to say it's
17 one pool, but obviously you're going
18 to get an opportunity to fix New York
19 before we do any offsets.

20 So there's no fixed time scale.
21 There would have been, for the
22 individuals not making on the desk,
23 we would have had to look at
24 contractual terms and time scales
25 relating to those people and come up